

1 A It depends.

2 Q Do prices generally go up when  
3 bidders enter the market?

4 A I'll accept the "generally," yes.

5 Q Isn't it true that Comcast was  
6 unhappy that MASN was entering the market of  
7 programming rights?

8 A I haven't seen evidence to suggest  
9 that they're unhappy or happy. I would  
10 presume as competitors that most competitors  
11 don't like more competition.

12 MR. KIM: May I approach, Your  
13 Honor?

14 JUDGE SIPPEL: You may.

15 BY MR. KIM:

16 Q Mr. Orszag, I'm showing what's  
17 been marked for identification as MASN Exhibit  
18 No. 115 and I'll ask you, sir, whether you  
19 recognize that document.

20 A I have seen this document, yes.

21 JUDGE SIPPEL: Is MASN 107 -- Is  
22 that in evidence?

1 MR. KIM: Yes, sir. But 115, Your  
2 Honor. Oh, 107 is in evidence.

3 JUDGE SIPPEL: It is.

4 MR. KIM: It is.

5 JUDGE SIPPEL: And what about 115?

6 MR. KIM: 115 is also in evidence.

7 JUDGE SIPPEL: Thank you.

8 BY MR. KIM:

9 Q If I could direct your attention  
10 to the second page of that document, Mr.  
11 Orszag.

12 JUDGE SIPPEL: We have another  
13 highly confidential here.

14 MR. KIM: Yes, we can clear the  
15 courtroom.

16 THE WITNESS: Sure.

17 BY MR. KIM:

18 Q And this is an internal email  
19 correspondence from Comcast, correct?

20 A I don't know that for sure because  
21 I'm not sure I know who Scott Langerman and  
22 Sam Schroeder are.

1 Q I'm represent to you that this is  
2 a document produced by Comcast. Is that fair?

3 A That's fair, yes.

4 Q And in fact you said you've seen  
5 this document before, true?

6 A Yes, I saw it in your exhibit  
7 list, yes.

8 Q And if I could direct your  
9 attention to the first asterisk point from the  
10 email from Mr. Scott Langerman to a Mr. Sam  
11 Schroeder on August 3, 2006. Could you read  
12 that first asterisk paragraph into the record  
13 please?

14 A Sure. [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED] [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]

8 Q Did you rely upon this document in  
9 forming your opinion in this case, sir?

10 A No, I did not.

11 Q [REDACTED]  
12 [REDACTED]?

13 A [REDACTED]  
14 [REDACTED] [REDACTED]  
15 [REDACTED] [REDACTED]  
16 [REDACTED]

17 Q But is that an economically sound  
18 view that [REDACTED]  
19 [REDACTED]?

20 A Again, I go back to what I said.  
21 It depends on sort of the structure of  
22 competition, etc. But generally increased

1 competition in bidding markets leads to higher  
2 prices for content owners.

3 Q Did you consider this document in  
4 determining whether Comcast had any incentives  
5 to limit MASN?

6 A I don't think that affects my  
7 analysis, no. I did not consider it. I did  
8 not rely upon it. I'm sorry.

9 Q And do you know that the date of  
10 that email as August 3, 2006?

11 A I see that, yes.

12 Q Do you know when the affiliation  
13 agreement between MASN and Comcast was  
14 reached?

15 A I believe it was August 4, 2006.

16 Q Now you distinguish between  
17 Comcast Sports Net Mid-Atlantic on the one  
18 hand and Comcast Sports Net Philadelphia on  
19 the other hand, correct?

20 A That is correct.

21 Q Are you sure that Comcast thinks  
22 of them separately?

1           A       I believe so, yes.

2           Q       As an economically rational  
3   entity, doesn't Comcast think about what's  
4   good for Comcast?

5           A       Well, it depends which -- When you  
6   vertically integrate it, it depends who you're  
7   asking. The programming folks will generally  
8   be focused on programming and the distributors  
9   will be focused on distribution and there will  
10   be a few people at the top that will be  
11   focused on the overall direction of the  
12   company.

13          Q       Isn't it true that Comcast doesn't  
14   draw those kinds of lines between Mid-Atlantic  
15   and Philadelphia?

16          A       I can't agree to that because I  
17   know that there's lots of evidence that they  
18   do draw such lines, for example, in their  
19   determination of where to carry the  
20   programming. And so there may be  
21   circumstances where they don't draw lines and  
22   there may be circumstances where they do draw

1 lines.

2 MR. KIM: May I approach, Your  
3 Honor?

4 JUDGE SIPPEL: You may.

5 BY MR. KIM:

6 Q Mr. Orszag, I'm showing you what's  
7 been marked as MASN Exhibit No. 69 and I'll  
8 ask you, sir, whether you recognize that  
9 document.

10 JUDGE SIPPEL: Again, this is in  
11 evidence.

12 MR. KIM: Yes, sir.

13 JUDGE SIPPEL: Do we need these  
14 things as highly confidential? Do you know?

15 MR. KIM: Your Honor, it's not my  
16 designation. I would have no objection to  
17 eliminating it, but it's not my document.

18 THE WITNESS: Mr. Kim, when you  
19 have a moment if it's okay for a break, I  
20 would like one.

21 MR. KIM: Of course.

22 THE WITNESS: You can finish this

1 if you'd like. It's not that urgent.

2 MR. KIM: Sure.

3 MR. BURKE: I do think it reflects  
4 the internal content.

5 JUDGE SIPPEL: All right. Okay.

6 BY MR. KIM:

7 Q Mr. Orszag, do you recognize that  
8 document?

9 A I have seen this document before,  
10 but it's been awhile, I think, since I looked  
11 at it.

12 JUDGE SIPPEL: It's in evidence,  
13 right?

14 MR. KIM: Yes, sir.

15 BY MR. KIM:

16 Q Mr. Orszag, I'll just move through  
17 the document and we'll get to your break if  
18 that's okay.

19 A That's fine.

20 Q Do you see the email from Jack  
21 Williams on Monday, August 30, 2004?

22 JUDGE SIPPEL: Around the first



1 page or where?

2 MR. KIM: Yes, sir.

3 THE WITNESS: You mean right at  
4 the bottom of page one?

5 BY MR. KIM:

6 Q That's correct.

7 A I see that, yes.

8 Q And do you know who [REDACTED]  
9 is?

10 A I believe [REDACTED] at the  
11 time, this is August of 2004, was in the role  
12 of the Comcast Sports Net group, but I'm not  
13 positive about that.

14 Q And this is a discussion that  
15 follows in the email from Mr. Ortman on  
16 Friday, August 27, 2004, correct?

17 A I observe that, yes.

18 Q And could you read the short email  
19 from [REDACTED] into the record please?

20 A Starting on the bottom of page  
21 one?

22 Q Yes, sir.

1           A       Okay. [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11           Q       And who is he writing to, sir?

12           A       Mr. Burke.

13           Q       And does Mr. Burke agree or  
14 disagree with what he says?

15           A       Mr. Burke then writes, [REDACTED]

16 [REDACTED]

17           Q       And isn't it true, sir, that [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21           A       If I may look at that part of the  
22 email, I would appreciate it.

1 Q Absolutely.

2 A That is correct.

3 MR. KIM: Your Honor, the witness  
4 has requested a break and I have no objection  
5 to a break at this point if it's convenient  
6 for the Court.

7 JUDGE SIPPEL: Yes. This will be  
8 fine. It's 11:25 a.m. We'll come back --  
9 It's only 11:25 a.m. We'll come back in 15  
10 minutes. We are in recess. Thank you. Off  
11 the record.

12 (Whereupon, a short recess was  
13 taken.)

14 JUDGE SIPPEL: Let's go back on  
15 the record.

16 Mr. Kim?

17 MR. KIM: Thank you, Your Honor.

18 BY MR. KIM:

19 Q Mr. Orszag, when we broke, we were  
20 talking about the relationship between Comcast  
21 SportsNet Philadelphia and Comcast SportsNet  
22 Mid-Atlantic. Do you recall that?

1           A       Yes, prior to the documents that  
2   you showed me.

3           Q       Terrific. Isn't it true that  
4   Comcast Corporate had put sports programming  
5   where it wants to?

6           A       Well, we define by the rights that  
7   they acquire from the sports teams.

8           Q       Right, but once they acquire those  
9   rights, they can pretty much put it wherever  
10   they want to among their programming arms,  
11   true?

12          A       It's been a while since I went  
13   through the programming rights contracts. I  
14   can't confirm or deny that, I'm sorry.

15          Q       Okay, but if the programming  
16   rights contracts permitted it, Comcast could  
17   put it in whatever arm it wants to, correct?

18          A       Between the two, yes, that is  
19   correct.

20          Q       And in fact, Comcast SportsNet  
21   Mid-Atlantic and Philadelphia share content  
22   today, don't they?

1           A       I believe they share some form of  
2   ESPN content.

3           Q       And don't they also share  
4   programming rights to ACC Basketball?

5           A       I'm not sure about that.  I'm  
6   sorry.

7           Q       Don't they also share programming  
8   rights to SEC Basketball?

9           A       Again, I'm not sure about that.

10          Q       So your opinion has analyzed those  
11   types of sharing between Philadelphia and Mid-  
12   Atlantic?

13          A       At one point I was exposed to  
14   those documents and I reviewed them.  Sitting  
15   here today, I don't recall the precise nature  
16   of the ability of them to share programming.

17                   JUDGE SIPPEL:  Does that make a  
18   difference?

19                   THE WITNESS:  I don't think it  
20   does.

21                   JUDGE SIPPEL:  Could you explain  
22   that to me because you're looking for the

1 economic significance of a decision being made  
2 by, let's say by MASN and the decision being  
3 made by CSNMA and can you not take into  
4 consideration, you know, which is more free  
5 wheeling, independent, etcetera?

6 THE WITNESS: Well, say for  
7 example the Redskins, if I may, because it's  
8 an example we've heard a lot of in response to  
9 that. My understanding is that they would not  
10 have access to the rights to offer the  
11 Redskins in the Comcast SportsNet Philadelphia  
12 area. So as a result it wouldn't affect the  
13 ability of MASN to compete against Comcast  
14 SportsNet Mid-Atlantic for the Redskins  
15 rights. So it wouldn't change that analysis  
16 whatsoever.

17 JUDGE SIPPEL: But that's one  
18 narrow example.

19 THE WITNESS: It will depend, the  
20 answer to the question is it will depend on  
21 the programming rights at issue. And the  
22 examples that have been given were ones that

1     were more narrowly tailored like the Ravens  
2     and Redskins.

3                     JUDGE SIPPET:   Okay.

4                     BY MR. KIM:

5             Q       Let's talk about the Ravens, Mr.  
6     Orszag.  You've heard testimony, have you not,  
7     that the Ravens' territory includes  
8     Harrisburg, Pennsylvania?

9             A       I've heard that testimony.  I've  
10    not independently confirmed that.

11            Q       And isn't it true that today  
12    Comcast carries CSN Philly in Harrisburg,  
13    Pennsylvania?

14            A       That is correct.

15            Q       Comcast does not today carry CSN  
16    Mid-Atlantic in Harrisburg, Pennsylvania,  
17    correct?

18            A       That is correct.

19            Q       So if Comcast had acquired the  
20    rights to the Ravens, isn't it true they could  
21    have just given CSN Philly the right to show  
22    the Ravens games in Harrisburg, Pennsylvania?

1           A       Sitting here today I don't know if  
2   technologically the feasibility of that  
3   because they may not have the rights for the  
4   entire footprint of Comcast SportsNet  
5   Philadelphia and so they'd have to separately  
6   show different programming in say the inner  
7   city of Philadelphia and Harrisburg.  Sitting  
8   here today, I do not know whether that's  
9   technologically feasible.

10          Q       But sitting here today, don't you  
11   know that they technologically split up  
12   signals like ACC Basketball that are carried  
13   in MA in Harrisburg?

14          A       Right, but I don't know -- my  
15   understanding is the split feed allows them to  
16   split between say Baltimore and Washington.  
17   I don't know if they can do it more finely to  
18   Harrisburg.

19          Q       I thought part of your analysis in  
20   this case involved the fact that the head  
21   ends needed to be programmed separately, true?

22          A       Right, there are conflating two



1 issues, so let me try to explain, if I may.

2 Q Well, let's just get there.

3 MR. KIM: May I approach the  
4 witness, Your Honor?

5 JUDGE SIPPEL: Please.

6 BY MR. KIM:

7 Q Mr. Orszag, I'm showing you what's  
8 been marked as MASN Exhibit 2 which is already  
9 in evidence.

10 A Thank you.

11 Q And I'll ask you, sir, whether or  
12 not you recognize that document?

13 A I have been exposed to this  
14 document, yes.

15 Q That's a letter to Bud Selig, the  
16 Commissioner of Major League Baseball,  
17 correct?

18 A Yes.

19 Q And it's signed by C. Burke from  
20 Comcast Cable, correct?

21 A That is correct.

22 Q Can you explain why he defined

1 himself as the Chief Operating Officer during  
2 the proceeding when he signed this letter as  
3 President of Comcast Cable?

4 A No, I have no idea if his title  
5 changed. I'm sorry.

6 Q Okay. If you could turn to page  
7 two of this document, sir. Do you see a  
8 bullet at point number two?

9 JUDGE SIPPEL: This is in  
10 evidence, I take it?

11 MR. KIM: Yes, sir.

12 JUDGE SIPPEL: Where are you?  
13 Bullet two, second page.

14 MR. KIM: Page two, bullet two,  
15 Your Honor.

16 JUDGE SIPPEL: Got it.

17 BY MR. KIM:

18 Q Are you with me, Mr. Orszag?

19 A Yes, I am. You mean number two,  
20 it says "should the above actions."

21 Q Correct. And does that sentence  
22 read, "Should the above actions take place,

1 Comcast will agree to carry all the Nationals  
2 games that are available for local cable  
3 broadcast for the season effective  
4 immediately. We will carry the games on  
5 Comcast SportsNet, CN 8, or another  
6 available cable channel."

7 Did I read that correctly?

8 A Yes, you did.

9 Q Does that indicate that Comcast  
10 can dictate where a signal goes?

11 A Can you clarify what you mean by  
12 where a signal goes? I'm sorry.

13 Q Sure, absolutely. Mr. Burke is  
14 writing a letter to Bud Selig, correct?

15 A That is correct.

16 Q And in the letter he says that if  
17 we get the rights to the Nationals, we will  
18 carry the games on Comcast SportsNet, CN 8, or  
19 another available cable channel, does he not?

20 A Right.

21 Q He's not saying that it has to go  
22 on Comcast SportsNet in Atlanta, is he?

1           A       Right, and I think this is a  
2   closely-related issue to the overflow issue,  
3   that is, that there could be programming on  
4   Comcast SportsNet already and so they would  
5   have to put it someplace else if they would  
6   have the rights.

7           Q       And he's not expressing any  
8   technological limitations to showing these  
9   games across the Nationals' territory, is he?

10          A       Right, but my technological issue  
11   that I raised is a separate issue from what is  
12   raised here.

13          Q       Fair enough, but he's not even  
14   raising a technological issue, is he?

15          A       No, he is not.

16          Q       And does he not say above in the  
17   paragraph, the second full paragraph in the  
18   sentence, "in an attempt to do what is best  
19   for your fans and our customers, we would like  
20   to propose a resolution that allows the games  
21   of the Nationals to be seen across the  
22   Nationals' territory immediately and that

1 ensures that the Nationals and their fans are  
2 treated fairly and equitably in the future."

3 Did I read that correctly?

4 A Yes, you did.

5 Q Mr. Orszag, what advertising  
6 demographic does Comcast SportsNet sells up  
7 to?

8 A I presume that they're selling to  
9 some group that approximate the 18 to 49-year-  
10 old males, whether it's 21 to 49 or 21 to 45,  
11 but approximately that range is usually the  
12 target demographic for viewers of -- for  
13 advertisers seeking sports viewers.

14 Q Isn't it true that Comcast  
15 SportsNet says its key demographic is males 18  
16 to 49?

17 A I've seen documents to that  
18 effect, yes.

19 Q Isn't it true that's also the true  
20 demographic for ESPN?

21 A Yes.

22 Q And that's a national sports

1 network, not a regional sports network, true?

2 A I think that's fair -- yes, it's  
3 national.

4 Q And buys on ESPN are going to be  
5 more expensive than buys on an RSN, true?

6 A The overall buy will be because  
7 there's -- there is more viewers. The  
8 relevant thing from an economic perspective is  
9 CPT, the cost per thousand or the cost per  
10 eyeball.

11 Q Isn't that the same key  
12 demographic for MASN, males 18 to 49?

13 A Yes.

14 Q Now when you're analyzing  
15 discrimination for purposes of offering your  
16 opinion in this case, what standard did you  
17 use?

18 A What I tried to do was to look,  
19 ask the question of the definition of  
20 discrimination that I adopted in this case and  
21 the NFL case is to look at behavior of Comcast  
22 as a cable company.

1                   And if it was rationale for  
2 Comcast as a cable company to make the  
3 decision irregardless of whatever effect it  
4 may have on the programming arm, then that is  
5 a rational business decision within the four  
6 corners of Comcast. So what one can do is to  
7 look at two different sources of evidence of  
8 that.

9           Q       I just wanted to understand what  
10 your standard was. Thank you for answering  
11 that question.

12                   Isn't it true you applied a too  
13 lax standard?

14           A       Not at all.

15           Q       Isn't it your opinion that there  
16 was no discrimination because MASN has not  
17 proved that Comcast conduct "cannot plausibly  
18 be reconciled" with a justified business  
19 reason?

20           A       That was part of my analysis, but  
21 it was not the whole thing.

22           Q       Are those the words you used?

1           A       I used that for part of my  
2 analysis.

3           Q       Let me read the whole sentence in  
4 because I don't want to misstate any of it for  
5 the record, and please let me know if I read  
6 this incorrectly.

7           A       Can you point me to where?

8           Q       Absolutely. This is your  
9 testimony. Page 14, paragraph 30. Just let  
10 me know when you get there, sir.

11                   (Pause.)

12          A       I'm here.

13          Q       And let me just read the sentence  
14 into the record so there's no ambiguity.  
15 "Thus, to establish an economic base that's  
16 for discrimination claims against Comcast,  
17 MASN must demonstrate Comcast's decision not  
18 to carry the network on the systems at issue  
19 cannot be plausibly reconciled with the demand  
20 or lack thereof for MASN by the system  
21 subscribers, MASN's license fees and  
22 alternative uses of the available system



1 capacity."

2 Did I read that correctly?

3 A Yes, you did.

4 Q And in fact, you have that same  
5 sentence in your expert report, did you not?

6 A Yes, I did.

7 Q Do you really think that's the  
8 appropriate standard here? Cannot plausibly  
9 be reconciled?

10 A Well, remember, this is after a  
11 whole discussion of other MVPDs and Comcast's  
12 own actions. So this is part of the analysis  
13 and my point is okay, I've looked at other  
14 MVPDs. I've looked at Comcast actions that  
15 have helped MASN and then there's been put  
16 forward no evidence from MASN to contradict  
17 this in a way that changes my opinion.

18 Q You put this in your expert  
19 report, right, sir?

20 A Yes, I did.

21 Q And you put it in your testimony  
22 today?